

APPEAL NO. 032145
FILED OCTOBER 1, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 8, 2003. The hearing officer determined that, while the appellant (claimant) was not injured in the course and scope of her employment on _____, she does have a compensable right shoulder injury, as a matter of law, because of respondent (carrier) waiver; that the claimant had disability from February 1 through February 3, 2003, but that the claimant's reduced wages after February 10, 2003, were due to the claimant's resignation rather than the compensable injury; that the claimant's average weekly wage (AWW) was \$210.00; and that the carrier did not timely contest compensability pursuant to Section 409.021 and, therefore, waived the right to contest compensability. The AWW issue was resolved by stipulation. The carrier waiver issue was not appealed and has, therefore, become final pursuant to Section 410.169.

The claimant appeals the injury and disability issues in their own right essentially on a sufficiency of the evidence basis. The carrier responds, urging affirmance.

DECISION

Affirmed.

The claimant alleges a right shoulder injury on _____, when she was hit in the shoulder while helping to unload a truck as part of her duties. Whether she was hit in the right shoulder or left shoulder, who was present, what was said, and the mechanics of the incident are all disputed. The claimant first went to a doctor on January 31, 2003, and the hearing officer found disability from February 1 through February 3, 2003. The claimant returned to light duty on February 4, 2003. On February 10, 2003, the claimant was advised that her workers' compensation claim was denied and on that date she resigned her employment. It is undisputed that the claimant worked part time as a restaurant waitress for some periods after February 10, 2003.

The testimony and documentary evidence were in conflict in regard to the disputed issues and the evidence was sufficient to support the determinations of the hearing officer. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge